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11 Proposed Attorneys for Debtor  
12 and Debtor-in-possession  
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15 UNITED STATES BANKRUPTCY COURT  
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17 NORTHERN DISTRICT OF CALIFORNIA

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In re ) Case No. 10-10088  
INDUSTRY WEST COMMERCE ) (Chapter 11)  
CENTER, LLC )  
a California limited liability company )  
Debtor. )

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**MOTION FOR AUTHORITY TO  
EMPLOY BANKRUPTCY COUNSEL  
FOR DEBTOR-IN-POSSESSION  
AND DECLARATION OF PROPOSED  
COUNSEL**

27 To: THE HONORABLE ALAN JAROSLOVSKY, UNITED STATES BANKRUPTCY JUDGE:  
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29 The motion of Industry West Commerce Center, LLC, ("Debtor") respectfully represents:  
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31 1. Debtor filed a voluntary petition commencing the above-captioned case under  
32 Chapter 11 of the Bankruptcy Code on January 14, 2010.  
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34 2. Debtor is the debtor and debtor-in-possession in this case.  
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36 3. Debtor, as debtor-in-possession, wishes to employ the law firm of MacConaghy  
37 & Barnier, PLC as its attorneys in this case. The Debtor is informed and believes that said firm  
38 generally limits its practice to the areas of insolvency, reorganization, and bankruptcy law and is  
39 well qualified to represent Debtor. All attorneys comprising or associated with said firm who  
40 will render services in this case are duly admitted to practice law in the State of California and in

1 the United States District Court for the Northern District of California.

2       4. The Debtor has selected the law firm of MacConaghy & Barnier, PLC for the  
3 reason that the members of that firm have had considerable experience in matters of this  
4 character, and the Debtor believes that said firm is well qualified to represent it in this  
5 proceeding.

6       5. The professional services that said law firm is to render are:

- 7           (a) to advise Debtor regarding matters of bankruptcy law;
- 8           (b) to represent Debtor in proceedings or hearings in the Bankruptcy Court;
- 9           (c) to assist Debtor in the preparation and litigation of appropriate applications,  
10 motions, adversary proceedings, answers, orders, reports and other legal papers;
- 11           (d) to advise Debtor concerning the requirements of the Bankruptcy Code and Rules  
12 relating to the administration of this case and the operation of Debtor's business;
- 13           (e) to assist Debtor in the negotiation, preparation, confirmation, and implementation  
14 of a plan of reorganization; and
- 15           (f) to perform all other legal services for debtor as debtor-in-possession as may be  
16 necessary herein;

17           and it is necessary for Debtor as Debtor-in-possession to employ such legal services.

18       6. Because of the extensive legal services required, Debtor desires to employ the law  
19 firm of MacConaghy & Barnier, PLC under a general retainer at the normal hourly rates for each  
20 attorney in said firm who renders services in this proceeding. At the time of the filing of this  
21 motion, the normal billing rate of John H. MacConaghy is \$400.00 per hour, and the normal  
22 billing rate of Jean Barnier is \$300.00 per hour. Prior to the filing of the petition for relief, the  
23 Debtor paid to MacConaghy & Barnier, PLC a retainer in the amount of \$50,000.00. The  
24 Debtor has further agreed to pay said attorneys at their normal hourly rates such compensation as  
25 is allowed and ordered paid by this Court, together with actual and necessary expenses, pursuant  
26 to the retention agreement attached to this Motion and labeled Exhibit A.

1       7. The Debtor is a California limited liability company. As has been or will be set  
2 forth on the Debtor's List of Equity Security Holders, one of the Debtor's non-managing LLC  
3 members is Sean Heaton, who holds a 9% LLC interest. In September of 2009, Mr. Heaton  
4 consulted with MacConaghy & Barnier, PLC on an unrelated matter. MacConaghy & Barnier,  
5 PLC currently does not represent Mr. Heaton. To the best of the Debtor's knowledge, the law  
6 firm of MacConaghy & Barnier, PLC and its members and employees have no other connection  
7 with the Debtor, its creditors, any other party in interest, the United States Trustee or any person  
8 employed in the Office of the United States Trustee, or their respective attorneys and  
9 accountants, to the extent applicable.

10        8. To the best of the Debtor's knowledge, the law firm of MacConaghy & Barnier,  
11 PLC and its principals and employees are "disinterested persons" as that term is defined in 11  
12 USC § 101(13), and their employment would be in the best interest of the estate.

13 WHEREFORE, Debtor prays that it be authorized to employ the firm of MacConaghly &  
14 Barnier, PLC, of Sonoma, California, under a general retainer to represent it as debtor-in-  
15 possession in this proceeding under Chapter 11 of the Bankruptcy Code, and that the Court grant  
16 such other and further relief as it deems proper.

17 | Dated: January 14, 2010

## Industry West Commerce Center, LLC

/s/ Vincent Rizzo  
By Vincent Rizzo, Authorized Agent

## **DECLARATION OF PROPOSED ATTORNEY**

The undersigned, John H. MacConaghy, declares the following:

1. I am an attorney and counselor at law, duly admitted to practice in the State of California and before this honorable Court.

5        2. I am a principal of the firm of MacConaghy & Barnier, PLC, whose offices are  
6 located in Sonoma, California.

7       3.     Except as set forth in paragraph 7 above, neither my firm, its principals, nor its  
8 employees have any connection with the Debtor in this proceeding, its creditors, any other party  
9 in interest, their respective attorneys and accountants, the United States Trustee, or any person  
10 employed in the Office of the United States Trustee.

11           4. My firm represents no interest adverse to the Debtor as Debtor-in-possession  
12 herein, or its estate in the matters on which it is to be engaged.

13        5. My firm will not share its compensation with any other person, or enter into an  
14 agreement to share its compensation with any other person.

15        6. I acknowledge and agree that allowance of compensation to my firm is subject to  
16 exclusive jurisdiction of the Court after notice and hearing pursuant to the provisions of  
17 Bankruptcy Code Section 330.

18 I declare under penalty of perjury that the above set forth statement is true and correct.

Executed on January 16, 2010, at Sonoma, California.

/s/ John H. MacConaghy  
John H. MacConaghy

1                   **DECLARATION OF SERVICE BY EMAIL**  
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4                   I am a citizen of the United States, over the age of 18 years and not a party to the within  
5                   action. My business address is 645 First Street West, Suite D, Sonoma, California 95476.  
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7                   I served true and correct copies of the **MOTION FOR AUTHORITY TO EMPLOY  
8                   BANKRUPTCY COUNSEL FOR DEBTOR-IN-POSSESSION**, by email transmission,  
9                   addressed to the person(s) below.

10                  I declare under penalty of perjury under the laws of the State of California that the  
11                  foregoing is true and correct.

12                  Executed at Sonoma, California on January 16, 2010.

13                  \_\_\_\_\_  
14                  /s/ John H. MacConaghy  
15                  John H. MacConaghy

16                  Office of the U.S. Trustee  
17                  U.S. Department of Justice  
18                  235 Pine St., Ste. 700  
19                  San Francisco, CA 94104  
20                  Patricia\_Cutler@usdoj.gov

## **EXHIBIT A**

**MacCONAGHY & BARNIER, PLC**

**ATTORNEY'S FEE AGREEMENT**

Industry West Commerce Center, LLC, a California limited liability company (Client") and MacConaghy & Barnier, PLC ("Attorney") agree as follows:

1. The Legal Services. In general, the legal services that Attorney has been engaged to provide are as follows: the filing of a Chapter 11 case in the U.S. Bankruptcy Court for the Northern District of California, including the promulgation of a Chapter 11 petition on behalf of client and use his best efforts to promulgate a Plan of Reorganization should client elect. By signing this agreement, Client authorizes Attorney to take all action necessary or advantageous to the advancement of Client's rights and interests in connection with Attorney's representation of Client and to use Attorney's judgment in the handling of any matter.

2. No Guaranty of Result. Attorney agrees to use its best efforts in the representation of Client, but cannot guaranty the outcome of the matter.

3. Termination of Employment. Client may terminate the retention of Attorney at any time upon timely notice. If court proceedings are commenced on behalf of Client, (1) Client agrees to accompany any termination of Attorney with an executed Substitution of Attorneys and (2) Attorney may terminate representation of Client through Bankruptcy Court Order upon Motion to Withdraw duly filed and served in accordance with applicable Court and State Bar rules. Upon termination of retention by either Client or Attorney, Attorney reserves the right to seek compensation in the amount set forth below.

4. Attorney's Fees and Costs. Client agrees to compensate Attorney for services rendered in this matter based on hourly fees, currently at the rate of \$400.00 per hour for John H. MacConaghy and \$300.00 per hour for Jean Barnier. Client further agrees that Attorney may seek reimbursement of out-of-pocket disbursements (e.g. photocopying; long-distance telephone; messenger services; travel expenses; extraordinary postage; fees for process servers, court reporters, computerized legal research, expert witnesses and consultants; and Court filing fees). Client and Attorney acknowledge and agree that compensation of Attorney in the context of a Chapter 11 case is subject to Bankruptcy Court approval on motion prepared and filed by Attorney. In seeking a compensation award, Attorney agrees to comply with the "*Guidelines Pertaining to Requests for Compensation and Expenses by Professionals in Northern District Cases*" promulgated by the Office of the U.S. Trustee. Attorney may at his option, withdraw from representation and do no further work if any award of compensation made by the Bankruptcy Court becomes more than 60 days delinquent, unless other arrangements are made. As a condition to Attorney's engagement, Client agrees to pay to Attorney a retainer of \$50,000.00 on account of fees and costs to be incurred in matters described above. Attorney's account information for wire transfer purposes is "MacConaghy & Barnier, PLC., Account No. 001643355. Sonoma Valley Bank. 202 W. Napa St., Sonoma, CA 95476. ABA No.

121141615."

5. Other Responsibilities. Client shall be reasonably available for conference, consultation, depositions, document production, and court hearings, as necessary. Client acknowledges that as a Chapter 11 debtor-in-possession, it has fiduciary obligations (1) to provide accurate information to Attorney, the Bankruptcy Court, and its creditors, (2) to fully disclose its assets and liabilities, and (3) to preserve and protect its assets. Attorney's policy is to withdraw from representation if a client will not communicate with us, when a client breaches its fiduciary obligations as a bankruptcy debtor or debtor-in-possession against our advice, or when a client's conduct otherwise makes it unreasonably difficult to carry out our employment effectively.

6. Insurance Coverage. Attorney maintains insurance coverage for errors and omissions that would provide financial protection for clients in the unlikely event of a negligent act or omission by Attorney.

Dated: January 13, 2010

Industry West Commerce Center, LLC  
a California limited liability company

By Vincent Rizzo, Its Authorized Agent

Dated: January 13, 2010

MacCONAGHY & BARNIER, PLC

/s/ John H. MacConaghay  
By John H. MacConaghay

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